

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

IN RE: MITCHEL S. & ELIZABETH A. GENSLINGER
Debtor

CASE NO. 12-32100
Chapter 13
Judge Walter

MITCHEL S. & ELIZABETH A. GENSLINGER
123 East Market Street
Germantown, OH 45327
Plaintiffs,

ADV. NO.

-VS-

CITIBANK
William R. Rhodes, Chair/Pres/Dir
3900 Paradise Rd., Ste. 127
Las Vegas, NV 89109
Defendants.

COMPLAINT TO AVOID SECOND MORTGAGE

NOW COME the debtors, MITCHEL S. & ELIZABETH A. GENSLINGER, by and through Counsel, and state the following:

1. The debtors filed Chapter 13 on April 30, 2012.
2. The debtors are the owners of real estate located at 123 East Market Street, Germantown, Ohio with a legal description as follows:

SITUATE IN THE CITY OF GERMANTOWN, IN THE COUNTY OF MONTGOMERY AND STATE OF OHIO, AND BEING A PART OF SECTION NO. 13, TOWN NO. 3, RANGE 4 EAST, ETC., AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ONE HUNDRED TEN (110) FEET EAST OF THE INTERSECTION OF THE SOUTH LINE OF MARKET STREET WITH THE EAST LINE OF CHERRY STREET AND EXTENDING THENCE EAST ALONG THE SOUTH LINE OF MARKET STREET FIFTY-FOUR AND 85/100 (54.85) FEET, MORE OR LESS TO A POINT; THENCE SOUTH AT RIGHT ANGLES ONE HUNDRED AND FIFTY-SIX AND 75/100 (156.75) FEET, MORE OR LESS, TO A

POINT IN THE ALLEY IMMEDIATELY SOUTH OF SAID PREMISES; THEN WESTWARDLY AT RIGHT ANGLES, FIFTY-FOUR AND 85/100 (54.85) FEET, MORE OR LESS, TO A CORNER; THEN NORTH PARALLEL WITH THE EAST LINE OF CHERRY STREET, ONE HUNDRED AND FIFTY-SIX AND 75/100 (156.75) FEET, MORE OR LESS, TO THE PLACE OF BEGINNING.

3. Debtor obtained title to this property April 8, 1987. (See attached Deed - Exhibit A)
4. On November 10, 2003 the debtor incurred a first mortgage with Capital Mortgage Services which was later assigned to CitiMortgage and then to BSI Financial Services. The balance of the first mortgage at the time of the bankruptcy filing was \$158,052.26.
5. On October 23, 2007 the debtor incurred a second mortgage with Citibank NA in the amount of \$34,000.00.
6. The property was appraised on February 10, 2012. The appraisal amount was \$130,000.00. (Exhibit B)
7. The value of the real estate at the time of the bankruptcy filing was the same amount as the appraisal. (See attached Schedule A - Real Property - Exhibit C)
8. A copy of the Petition, Summary of Schedules, Chapter 13 Plan and Local Rules were served upon the defendant, Citibank, P.O. Box 790110, St. Louis, MO 63179 by the Chapter 13 Trustee on May 2, 2012.
9. Service to Citibank was made and not returned.
10. The Chapter 13 Plan contains a special plan provision which provides that there is insufficient equity to support the second mortgage and that the claim should be treated as an unsecured creditor. No objection was filed by the Creditor and the plan was confirmed on October 15, 2012.
11. An Objection to the Valuation of the real estate was not filed by the Defendant, Citibank. Therefore, the value of the real estate is \$130,000.00.
12. Pursuant to 11 USC 506, there is no equity in the property to support the second mortgage being paid as a secured creditor.
13. Pursuant to the confirmed plan, the mortgage held by the Citibank is to be stripped from the property and paid as an unsecured creditor with the

balance discharged upon completion of the plan. This mortgage is to be avoided.

WHEREFORE, the Debtor prays for an Order to strip off the second mortgage from the real estate and to avoid the second mortgage held by the Defendant, Citibank, and recorded at the Montgomery County Recorder's Office. Wherefore, the debtor also requests that the Order of this court be filed with the Montgomery County Records Office removing the second mortgage from the real estate located at 123 E. Market St., Germantown, Ohio 45327.

Respectfully submitted,

/s/ Wayne P. Novick
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Attorney for Debtor/Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint to Avoid Second Mortgage has been served by ordinary U.S. Mail to the following on the 24th day of October, 2012:

U.S. Trustee, 170 N. High St., Ste. 200, Columbus, OH 43215

Jeffrey M. Kellner, Chapter 13 Trustee, 131 N. Ludlow St., #900, Dayton, OH 45402

Mitchel and Elizabeth Genslinger, 123 E. Market St., Germantown, OH 45327

Citibank, P.O. Box 790110, St. Louis, MO 63179

Citibank, P.O. Box 790017, MS 221, St. Louis, MO 63179

I hereby certify that the foregoing Complaint was served by certified mail to the following on the 24th day of October, 2012:

Citibank, NA, William R. Rhodes, Chair/Pres/Dir, 3900 Paradise Rd., Ste. 127, Las Vegas, NV 89109

/s/ Wayne P. Novick
WAYNE P. NOVICK